

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:	§	
	§	
BROUGHER, INC.	§	CASE NO. 16-35575-H4-11
Debtor	§	(Chapter 11)
	§	JUDGE BOHM

EMERGENCY MOTION FOR USE OF CASH COLLATERAL

This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 14 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing.

Represented parties should act through their attorney.

TO THE HONORABLE JEFF BOHM, UNITED STATES BANKRUPTCY JUDGE:

Comes Now, Brougher, Inc., Debtor-in-Possession herein, with this its Emergency Motion for Use of Cash Collateral, (hereinafter “the Cash Collateral Motion”), pursuant to 11 U.S.C. §§ 361 and 363, and in support thereof would respectfully show unto this Court as follows:

I.
PARTIES

1. The Debtor may be served through its President, Wade Brougher, 8881 Hempstead,

Houston, Texas 77008, with a copy to its Counsel, Julie M. Koenig, 815 Walker, Suite 1040, Houston, Texas 77002; Julie.Koenig@cooperscully.com.

2. TBK Bank, SSB (“TBK”) is the Debtor’s only perfected secured creditor with an interest in cash collateral. TBK may be served through its registered agent, Gail Lehmann, 12700 Park Central Drive, Suite 1700, Dallas, Texas 75251 with a copy to James B. Allin, Senior Vice President, 12700 Park Central Drive, Suite 1700, Dallas, Texas 75251; jallin@triumphcf.com.

II.

JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to 28 U.S.C. §1334, venue is appropriate pursuant to 28 U.S.C. §1408, and this is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A), (D), (K), (M) and)(O).

III.

NOTICE

4. Sufficient and adequate notice of the Cash Collateral Motion has been given to prevent immediate and irreparable harm pursuant to Bankruptcy Rule 4001(c); Local Bankruptcy Rule 4001(c), and 4002-1(i) , as required by Sections 102, 361 and 363 of the Bankruptcy Code

IV.

FACTS

5. Brougher, Inc. was formed on July 9, 1999. On December 27, 2012, it merged with a subsidiary, Machine USA, LLC with Brougher, Inc. being the surviving corporation after

the merger. The Debtor is in good standing with the Secretary of the State of Texas.

6. The Debtor is in the business of forging parts/equipment for the oil and gas industry.
7. On November 2, 2016, the Debtor filed a Voluntary Petition for Reorganization under Chapter 11 of Title 11 of the United States Code in order to protect its business as an ongoing concern. No Trustee has been appointed and the Debtor is operating as Debtor-in-Possession.

V.
PREPETITION LIENS

8. On March 4, 2016, the Debtor executed a loan agreement with TKB for a \$10,400,000 Revolving Credit Facility with interest at the rate of prime plus 4% and a \$2,650,000 Term Loan with interest at the rate of prime plus 5% (the “Loans”). A true and correct copy of the Loan Agreement is attached hereto as Exhibit “A”.
9. As of July 7, 2016, the Debtor executed a First Amendment to Loan Agreement with TKB to increase the availability block available to the Debtor and to require **for the first time** that the Debtor hire a restructuring consultant at its own expense but one who was satisfactory to TKB at its sole discretion. A true and correct copy of the First Amendment to Loan Agreement is attached hereto as Exhibit “B”
10. The Term Loan is payable in equal monthly installments of \$26,095.60 for a period of 180 months.
11. The Debtor can only borrow against the Revolving Credit Facility based upon the borrowing base. The borrowing base is calculated as up to eighty-five (85%) percent of the Debtor’s eligible accounts plus fifty (50%) of the Debtor’s eligible inventory plus

seventy-five (75%) percent of the net orderly liquidation value of the Debtor's eligible equipment, not to exceed \$10,400,000.00.

12. According to the UCC Financing Statement on file with the Secretary of the State of Texas, the Loans are secured by "all assets of the Debtor, whether now owned or hereafter acquired, including all products and proceeds thereof". A true and correct copy of the UCC Financing Statement is attached hereto as Exhibit "C". The Debtor reserves the right to challenge the perfection of or security interest in the Debtor's assets.
13. On the date of filing the outstanding balance on the Loans was approximately \$8,074,317.40, consisting of (i) Revolving Loan in the amount of \$5,456,501.82 in principal plus \$38,804.08 in accrued interest and (ii) Term Loan in the amount of \$2,561,666.68 in principal plus \$17,344.82 in accrued interest.

VI.

CASH COLLATERAL

14. The Debtor requires the emergency use of cash collateral in the amount of \$241,673.00 for the next twenty (20) days to meet payroll and expenses to continue its business operations. The majority of these funds are for payroll, supplies and continuing expenses.

The anticipated income for this period is \$233,138 plus cash on hand. A copy of the anticipated budget for the next twenty (20) days is attached hereto as Exhibit "D" and fully incorporated herein by reference.
15. In addition, the Debtor requires the use of cash collateral in the amount of \$450,000 on a monthly basis. Without the use of cash collateral, the Debtor will be unable to retain or

pay employees, to maintain its assets, to pay payroll taxes, inventory, suppliers, overhead, and other expenses necessary for its reorganization.

16. As adequate protection for the use of cash collateral, the Debtor shall agree, with Court approval, to grant replacement liens to TKB equal to those validly held pre-petition, if any.
17. The security interests granted to TKB post-petition shall not have priority over (a) prior perfected and unavoidable liens and security interest in the property of the Debtor's estate as of the Petition Date other than their liens in the Pre-Petition Collateral, provided that (1) such liens and security interest are prior to other prepetition liens and security interests, valid, perfected, not adequately protected, and non-avoidable in accordance with applicable law; (b) the quarterly fees payable to the United States Trustee pursuant to 28 U.S.C. §1930; and (c) any fees and expenses awarded to Debtor's Counsel or Debtor's Special Counsel pursuant to Court Order.

WHEREFORE, PREMISES CONSIDERED, Brougher, Inc., Debtor-in-Possession herein, prays that this Court conduct an Emergency Hearing on the Emergency Motion to Use Cash Collateral, enter an Order for Emergency Use of Cash Collateral for the Period November 2, 2016, through November 22, 2016, set a final hearing on the Motion, enter an Order for Interim Use of Cash Collateral after the hearing, and for such other and further relief, at law and in equity, as this Court deems just.

Respectfully submitted this 3rd day of November, 2016.

COOPER & SCULLY, PC.

By: /s/ Julie M. Koenig
Julie M. Koenig
SBA# 14217300
Fed Id# 10396
815 Walker, Suite 1040
Houston, Texas 77002
(713) 236-6800 (Telephone)
(713) 236-6880 (Telecopier)
Julie.Koenig@cooperscully.com

Attorneys for the Debtor

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the parties listed below and the parties on the attached service list, including parties requesting notice, via either ECF Notification, or by e-mail, or by first class mail, proper postage affixed, on the 3rd day of November, 2016.

By: /s/ Julie M. Koenig
Julie M. Koenig

Office of the U.S. Trustee
515 Rusk Ave., Ste. 3516
Houston, Texas 77002
Via ECF Notification

Gail Lehmann
12700 Park Central Drive, Suite 1700
Dallas, Texas 75251

James B. Allin, Senior Vice President,
12700 Park Central Drive, Suite 1700
Dallas, Texas 75251

jallin@triumphcf.com

Label Matrix for local noticing
0541-4
Case 16-35575
Southern District of Texas
Houston
Thu Nov 3 08:00:48 CDT 2016

A & M Technical Services, Inc.
4102 Lauder Road
Houston, TX 77039-2551

A. J. Hurt Jr., Inc. dba Hurt Company
P O BOX 958427
ST. Louis, MO 63195-8427

ATTORNEY GENERAL
TAX DIV. - BANKRUPTCY
POB 12548
AUSTIN, TX 78711-2548

(p)ALLIED INSURANCE
1100 LOCUST STREET D1-7C-0301
DES MOINES IA 50391-1100

ArcelorMittal Steel USA
28783 Network Place
Chicago, IL 60673-1287

BBVA Compass - 8176
PO Box 2210
Decatur, AL 35699-0001

Bobcat of Houston
P.O. Box 846271
Dallas, TX 75284-6271

Brian Service and Calibration
P.O. Box 1348
Pearland, TX 77588-1348

COSS Systems Corporation
26 Arcadia Road, Suite 5
Old Greenwich, CT 06870-1721

Brougher, Inc
8881 Hempstead Rd
Houston, TX 77008-6017

A&A Pallet Co
10350 W Montgomery Rd
Houston, TX 77088-3023

A.W.Chesterton Co.
500 Unicorn Park Dr
Woburn, MA 01801-3377

Advanced Overhead Crane Service
22531 FM 2100
Crosby, TX 77532-3173

Alterra Bank
11300 Tomahawk Creek Pkwy, Suite 100
Leawood, KS 66211-2700

Armstrong Transport Group, Inc.
PO BOX 150370
Ogden, UT 84415-0370

Bass Tool & Supply Inc.
2300 Fairway Park Drive Ste 100
Houston, TX 77092-7603

Bourn & Koch Inc
JP Morgan Chase
Chicago, IL 60678-1368

Bud Griffin Customer Support
5010 Teminal St
Bellaire, TX 77401-6007

Carbide and Supply, Inc.
4311 FM 2351
Friendswood, TX 77546-2406

United States Bankruptcy Court
PO Box 61010
Houston, TX 77208-1010

A. Finkl & Sons
P.O. Box 92576
Chicago, IL 60675-2576

ASW Steel Inc.
P. O. Box 56
Welland Ontario L3B 5N9, CANADA

Airgas Inc.
259 N. Radnor-Chester Rd
Radnor, PA 19087-5240

American Express
P. O. Box 360001
Ft Lauderdale, FL 33336-0001

Attorney General
Department of Justice
10th and Constitution Ave N.W.
Rm. 400
Washington, D.C 20530-0001

Blake Partners
8881 Hempstead Road
Houston, TX 77008-6017

Bracewell & Giuliani, LLP
P.O. Box 848566
Dallas, TX 75284-8566

CDS Transport, Inc.
P.O. Box 100
Heber City, UT 84032-0100

Cardmember Services
P O BOX 94014
PALATINE, IL 60094-4014

Champion Fastners
10624 Tower Oaks
Houston, TX 77070-5917

Chemsearch
PO Box 971269
Dallas, TX 75397-1269

Chemtool. Inc.
Lockbox #777161
Chicago, IL 60677-7001

Cintas Corporaton
PO Box 650838
Dallas, TX 75265-0838

City of Houston Permit Section
P.O. Box 2688
Houston,, TX 77252-2688

Controlled Fluids, Inc.
PO Drawer 1914
Beaumont, TX 77704-1914

Cooper & Scully, P.C.
815 Walker St., Suite 1040
Houston, TX 77002-5776

Core Refractory Systems
4555 Homestead Suite 606
Houston, TX 77028-5836

Crane Masters Inc.
P. O. Box 1147
Splendora,, TX 77372-1147

Culligan
3201 Premier Dr, Ste #300
Irving, TX 75063-6075

Culligan
3201 Premier Dr. Suite 300
Irving, TX 75063-6075

Cutting Tools, Inc.
P.O. Box 41109
Houston, TX 77241-1109

D & P Technologies, Inc.
1001 1/2 West 34th Street
Houston, TX 77018-6353

D&S Machine Works, Inc.
4136 Pinemont Dr.
Houston, texas 77018-1106

D.C.G. Machine, Inc
1001 Cherokee Trace
White Oak, TX 75693-3501

DATAWATCH Systems, Inc.
P. O. Box 79845
Baltimore, MD 21279-0845

DE LAGE LANDEN Financial Services, INC
1111 Old Eagle School Road
Wayne, PA 19087-1453

DXP Enterprises, Inc.
P.O. Box 201791
Dallas, TX 75320-1791

Dahill
P.O. Box 314
San Antonio, TX 78292-0314

Dealers Electrical Supply
4433 Airline Drive
Houston, TX 77022-2927

(p)DELL FINANCIAL SERVICES
P O BOX 81577
AUSTIN TX 78708-1577

Delta Refractories, Inc.
21557 Provincial Blvd., Suite A
Katy, TX 77450-7558

Element
P.O.Box 841774
Dallas, TX 75284-1774

Ensource Corporation
PO Box 691005
Houston, TX 77269-1005

FORT BEND TAX APPRAISAL DISTRICT
2801 B.F. Terry Blvd (FM 2218)
Rosenberg, TX 77471-5600

FedEx
P.O. Box 660481
Dallas, TX 75266-0481

First Insurance Funding
PO Box 7000
Carol Stream, IL 60197-7000

Franklin Research Associates Corporation
11354 Jones Road West
Houston, TX 77065-3638

G & K Services
P. O. Box 842385
Boston, MA 02284-2385

GALVESTON COUNTY TAX OFFICE
P.O. BOX 1169
GALVESTON, TX 77553-1169

GE-Max
1001 E. Village Ct.
Pasadena, TX 77506-5136

Gene's Machine, Inc.
405 Berwick Street
Victoria, TX 77904-2889

Global Practice Solutions
6203 Jadecrest Dr.
Spring, TX 77389-3675

Global Tranz Enterprise, Inc.
5415 E High Street, Bldg A9 Suite 460
Phoenix, AZ 85054-5476

Goolsby Testing Inc.
P. O. Box 1416
Humble, TX 77347-1416

Gorman's Uniform Rental, Inc.
9021 Katy Freeway
Houston, TX 77024-1601

Grainger, Inc.
Dept 842179947
Kansas City, MO 64141-6267

Groves Industrial Supply
4814 Solution Center
Chicago, IL 60677-4008

HARRIS COUNTY/CITY OF HOUSTON
C/O BANKRUPTCY DEPT
PO BOX 3064
HOUSTON, TX 77253-3064

Harris County
c/o John Dillman
PO Box3064
Houston, TX 77253-3064

Heritage-Crystal Clean, LLC
13621 Collections Center Drive
Chicago, IL 60693-0136

Hilti, Inc.
Dept. 0890
Dallas, TX 75312-0890

Hocker Incorporated
13402 Weiman Rd.
Houston, TX 77041-2542

INNOVATIVE TOOLING & ACCESSORIES INC.
13203 EMMETT ROAD
HOUSTON, TX 77041-2564

INTERDYN BMI
5433 Westheimer Rd. Suite 1000
Houston, TX 77056-5329

IRS
8701 S. GESSNER
HOUSTON, TX 77074-2944

Iglesias Machine Shop
7545 Breen DR.
Houston, TX 77086-3636

Innova Integrated Solutions, Inc
12111 Brittmoore Park Dr.
Houston, TX 77041-7230

(p)INTERNAL REVENUE SERVICE
CENTRALIZED INSOLVENCY OPERATIONS
PO BOX 7346
PHILADELPHIA PA 19101-7346

Internal Revenue Service
Insolvency Department
PO Box 7346
Philadelphia, PA 19101-7346

Intralinks, Inc.
PO Box 392134
Pittsburgh, PA 15251-9134

Iron Mountain Records Management
P.O. BOX 915004
Dallas, TX 75391 5004

Jerry W. Brougher
43 RIVER HOLLOW LN
HOUSTON, TX 77027-9401

Joseph Unis
8117 Preston Rd., Suite 300
Dallas, TX 75225-6347

KNJ Manufacturing, LLC
8550 Fairbanks N Houston Rd.
Houston, TX 77064-7940

Kimball Midwest
Dept. L-2780
Columbus, OH 43260-2780

Konecranes
P. O. Box 641807
Pittsburgh, PA 15264-1807

Latrobe Specialty Metals Company
P.O. Box 644181
Pittsburgh, PA 15264-4181

Lehigh Specialty Melting Inc.
Dept. 781522
Detroit, MI 48278-1522

Lone Star Heat Treating Co. Corp.
P.O. Box 15621
Houston, TX 77220-5621

Loren D. Stark Company, Inc.
10750 Rockley Road
Houston, TX 77099-3516

MELTON & MELTON, L.L.P.
6002 Rogerdale, Suite 200
Houston, TX 77072-1660

MONTGOMERY COUNTY
TAX COLLECTOR
400 N SAN JACINTO
CONROE, TX 77301-2823

McMillian Metal Services
4660 Brittmoore Rd.
Houston, Texas 77041-8008

(p)MERCEDES BENZ FINANCIAL SERVICES
13650 HERITAGE PARKWAY
FORT WORTH TX 76177-5323

NLMK - North America Plate Verona
15 Roemer Blvd
Farrell, PA 16121-2201

Nationwide Transportation, Inc.
1999 W 75th Street, Suite 200
Woodridge, IL 60517-2610

Navasota Industrial Supply, LTD
P. O. Box 1487, 9527 FM 379
Navasota, TX 77868-1487

Neal Cannon
P.O. Box 70066
Houston, Texas 77270-0066

O'Connor & Associates
2200 North Loop West, Suite 20
Houston, TX 77018-1754

P&B Testing, Inc.
P.O. Box 924469
Houston, TX 77292-4469

PGT Trucking Inc.
P.O. Box 150167
Ogden, UT 84415-0167

PRAXAIR Distribution Inc
P.O. Box 120812 Dept 0812
Dallas, TX 75312-0812

Paul Hastings LLP
Lockbox 4803
Los Angeles, CA 90189-4803

Performance Contracting Group, Inc.
P. O. Box 872346
Kassas City, MO 64187-2346

Pinch Flatbed, Inc.
P O BOX 60473
Houston, TX 77205-0473

Pinch Trucking
P O BOX 60473
Houston, TX 77205-0473

Precision Forging Dies Inc.
10710 Sessler St.
South Gate, CA 90280-7221

Professional Welding Supply, Inc.
3000 Brittmoore.Road, Bldg. B
Houston, TX 77043-1021

Ranger Lift Trucks
2100 INTERSTATE 10
BAYTOWN, TX 77521-1304

Reliant Business Products, Inc.
10641 Haddington Dr.; #100
Houston, TX 77043-3228

Ricoh USA , Inc.
PO BOX 41602
Philadelphia, PA 19101-1602

Rothe Enterprises, Inc.
P.O. Box 200443
San Antonio, TX 78220-0443

SECURITIES AND EXCHANGE
COMMISSION
450 FIFTH STREET NW
WASHINGTON, DC 20549-0006

SFI-Gray Steel, Ltd.
3511 W. 12th Street
Houston, TX 77008-6005

Saia Motor Freight Line
P.O. Box 730532
Dallas, TX 75373-0532

Specialty Supply Services
14903 Windlea Ln
Houston, TX 77040-1481

State Industrial Products
5915 Landerbrook Drive, Suite 300
Mayfield,, OH 44124-4034

Sun Coast Resources, Inc.
P.O. Box 202603
Dallas, TX 75320-2603

Surface Preparation-Texas, LLC
5973 South Loop East
Houston, TX 77033-1017

Sytek Electric Corp.
1233 West 34th Street
Houston, TX 77018-6207

TEXAS COMPTROLLER OF PUBLIC ACCOUNTS
111 E. 17TH STREET
AUSTIN, TX 78774-0100
Attn: Bankruptcy Dept

TNN Manufacturing Co., Inc.
8330 West Little York
Houston, TX 77040-4341

TRCW LLC
503 Avenue H
Rosenberg, Texas 77471-3042

Texas Commission on Environmental Qu..
PO Box 13088
Austin, TX 787113088

Texas Electrial Machinery Co..
5517 Dorbrandt
Houston, TX 77023-3704

Texas Honing Inc.
PO Box 204192
Dallas, TX 75320-4192

Texas Workforce Commission
PO Box 149037
Austin, Texas 78714-9037

Third Coast Bank SSB
P. O. Box 3871
Humble, TX 77347-3871

Tranter Inc.
Dept 3275
Dallas, TX 75312-3275

Triumph - TBK Bank, SSB
3 Park Central, Suite 1700
Dallas, TX 75251

Turn Key Machine, LLC
P.O. Box 484
Porter, TX 77365-0484

U. S. Bank Equipment Finance
P.O. Box 790448
ST. Louis, MO 63179-0448

UNITED STATES TRUSTEE
515 Rusk Avenue, Ste. 3516
Houston, Texas 77002-2604

US Trustee
Office of the US Trustee
515 Rusk Ave
Ste 3516
Houston, TX 77002-2604

UniPoint Software, Inc.
1425 Whyte Avenue, Suite 200
Winnipeg, MB R3E 1V7

Universal Stainless & Alloy Products, In
P.O. Box 640595
Pittsburgh, PA 15264-0595

Valbruna Slater Stainless, Inc.
P.O.Box 83186
Chicago, IL 60691-0186

Vince Delivery Service, Inc.
1639 Gault Rd.
Houston, TX 77039-1609

Vinson Corrosion Control Service
6720 Satsuma Drive
Houston, TX 77041-2708

Wade Brougher
4747 W ALABAMA
HOUSTON, TX 77027-4726

Wepuko Pahnke Engineering, LP
P.O. Box 2120
Springfield, OH 45501-2120

Wilson Fire Equipment
7303 Empire Central Drive
Houston, TX 77040-3207

Winter Compressor Service
17215 Cheyenne
Baytown, Texas 77523-8999

XPO Logistics
P.O. Box 5160
Portland, OR 97208-5160

Julie Mitchell Koenig
Cooper & Scully, PC
815 Walker, Suite 1040
Houston, TX 77002-5776

Allied Insurance
PO BOX 514540
Los Angeles, CA 90051-4540

Dell Financial Services
P. O. Box 5292
Carol Stream, IL 60197-5292

Internal Revenue Service
1919 Smith St.
Stop 5024 HOU
Houston, TX 77002

(d)Internal Revenue Service
STOP 6692 AUSC
Austin, TX 73301-0030

Mercedes-Benz Financial
P.O. Box 5209
Carol Stream, IL 60197-5209

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Frisa Forjados S.A. DE C.V.
Valentin G. Rivero No. 127
Col. Los Trevino Sta. Catarina,, N.L. Me

End of Label Matrix
Mailable recipients 145
Bypassed recipients 1
Total 146